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National Indian Gaming Commission
 Attn: Chairman Philip N. Hogan
 441 L Street NW
 Washington D.C. 20005

Re: Comments in response to Class II
 definitions, classification standards and
 technical standards

Dear Chairman Hogan and Members of the Commission:


Enclosed is alternative rule language in response to the Class II definition, classification and technical standards previously proposed by the NIGC. Essentially we see all three proposed regulations amount to one rule. We also believe that in order to comport with case law the current NIGC regulations can only be adjusted to comport with the statute and the case law interpreting the statute. Furthermore, we believe the NIGC lacks the authority under IGRA to promulgate the rules as they were proposed in 2006.

The basic premise behind the alternative language is:

- a) We believe Congress intended to allow for the evolution in technology for Class II gaming
- b) Any change in current definitions should be simple short, global and not limit the individual aspects of games
- c) Congress recognized a difference between the types of lottery games offered that met the definition of class II and those that were class III in nature.
- d) Tribal gaming commissions are the primary regulators
- e) Game classifications are fact specific and should proceed on such basis as congress indicated this preference when it allowed for Advisory Opinions
- f) A process should exist by which classification decisions are reviewable short of enforcement actions

We believe these reasons mandate the NIGC take a further look at the alternatives proposed herein.

Sincerely,


 Todd Goodman
 Chairman,
 Caddo Gaming Commission

PART I: SUBSTANTIVE CLASS II DEFINITIONS/CLASSIFICATION STANDARDS

Proposed Option for Substantive Class II Definition/Classification Standards: The National Indian Gaming Commission ("NIGC") should withdraw its current Proposed Rule, 71 Fed. Reg. 30232 (May 25, 2006), the Proposed Rule, 71 Fed. Reg. 30238 (May 25, 2006), and the Proposed Rule, 71 Fed. Reg. 30336 (August 11, 2006), and the NIGC should instead amend current 25 C.F.R. part 502 as shown below in the form of clarification of the NIGC's current regulations (deletions from the current substantive regulations are shown in bold strikethrough font, with additions shown in bold underlined font):

502.7. Electronic, computer or other technologic aid

(e) Electronic, computer or other technologic aid means any machine or device that:

(1) Assist a player or the playing of a game;

(2) Is not a slot machine as defined in 15 U.S.C. 1171(a)(1) or an electronic or electromechanical facsimile as defined in section 502.8; and

(3) Is operated in accordance with applicable Federal communications law.

(b) Electronic, computer or other technologic aids include, but are not limited to, machines or devices that:

(1) Broaden the participation levels in a common game;

(2) Facilitate communication between and among gaming sites; or

(3) Perform an element of a game for a player or

(3d) Allow a player to play a game with or against other players rather than but not solely with or against a machine or device. For games of bingo, lotto, and other games similar to bingo, the award of instant cash consolation or other prizes to one or more but not other players in the game does not constitute the play of a game with or against a machine or device if the game involved the play by two or more players for a common prize. An interim prize is a prize that is awarded to a player during the play of a game. A consolation prize is a prize that is awarded to a player after the play of the game.

(c) Examples of electronic, computer or other technologic aids include, but are not limited to, pull-tab dispensers and/or readers, telephones, cables, televisions, screens, satellites, bingo blower, electronic player actions, or electronic cards for players, participate-in-bingo-games.

502.8. Electronic or electromechanical facsimile

Electronic or electromechanical facsimile means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except that, for bingo, lotto, and other games similar to bingo, the electronic or electromechanical format is designed to facilitate participation by allowing multiple players to play with or against each other rather than with or against a machine or device that but for the Act would be subject to 15 U.S.C. 1171 (a)(2).

(3). AND by which a player plays a game of chance without at least one other player playing or having played the game at the same time. A card used in the play of bingo or lotto, and the books, wheels, and balls, used in bingo, and other games similar to bingo, does not constitute a machine or device.

502.9. Other Games similar to bingo

Other games similar to bingo means any game played in the same location as bingo (as defined in 25 U.S.C. 103(7)(A)(i)) constituting a variant on the game of bingo, provided that such game has two or more players who play the game at the same time for a common prize or prizes, is not house-banked and permits players to compete against each other for a common prize or prizes. A variant on the game of bingo does not include a game in which:

(a) the game is played without a designated winning pattern;

(b) the game can end before a player has achieved a designated winning pattern; or

(c) none of the objects used in the play of the game are drawn or electronically determined during the play.

PART II - PROCEDURE FOR CLASS II DEFINITIONS/CLASSIFICATION STANDARDS

Proposed Option for a Procedural Process for Implementation of Class II Definitions/Classification Standards: If the NIGC determines to create a formal procedure for the classification of games (in lieu of, or in addition to, the current ad hoc advisory opinion process), the NIGC should withdraw its current Proposed Rule, 71 Fed. Reg. 30232 (May 25, 2006), the Proposed Rule, 71 Fed. Reg. 30238 (May 25, 2006), and the Proposed Rule, 71 Fed. Reg. 46336 (August 11, 2006), and the NIGC should instead add a new part to 25 C.F.R. as shown:

Part 5 - CLASSIFICATION OF GAMES

Sec.

1. What does this part cover?
2. What is a classification decision?
3. Why must a tribe apply for a classification decision from the Commission?
4. Can a tribe rely upon a decision issued by the Commission to another tribe?
5. What must a tribe do with respect to all games played on its lands?
6. What must a tribe forward to the Commission with respect to classification decisions by the tribe?
7. When must a tribe request a classification decision from the Commission?
8. What is the effect of a classification decision?
9. Are there any additional requirements for games which employ machines or devices?
10. Will field tests be permitted for any games?
11. What is required of a tribe or person who merely seeks a modification of a game which is already the subject of a classification decision covered by this part?
12. Must a tribe or person seek a classification decision on a game which alleges is a game of skill?
13. Is there an opportunity for public comment on a request by a tribe to the Commission for a classification decision?
14. How does a tribe appeal a classification decision from the Commission?

§5.1 What does this part cover?

This part implements the Act and establishes the process for determining whether games played on Indian lands are subject to the Act and, if so, whether such games constitute class II or class III gaming as defined by the Act and by part 502 of this chapter. The intent of this part is to identify which games are class II and therefore subject to tribal jurisdiction and Commission oversight as provided by the Act for class II gaming. This part is not intended to affect the jurisdiction of a tribal government for gaming conducted on its lands including but not limited to as provided in the Act. This part shall take effect six months after its date of adoption by the Commission.

§5.2 What is a classification decision?

A classification decision is a written determination as provided under this part that a game is not subject to the Act or that the game falls within class II or class III gaming and is subject to the Act. Each person or entity who owns or provides a game to a tribe for use on Indian lands shall apply to the tribe in which the game is being provided for a classification decision under this part. Tribes or their designated representatives shall apply to the Commission for classification decisions under this part but only for those games as provided for in §5.7 of this part. The Commission and its offices shall no longer issue advisory opinions on game classification to non-tribal governmental entities.

§5.3 Why must a Tribe apply for a classification decision from the Commission?

A tribe is subject to enforcement action by the Chairman if the tribe offers a game on its tribe's Indian lands without complying with this part.

§5__4 Can a Tribe rely upon a classification decision issued by the Commission to another Tribe?

Classification decisions that are issued by the Commission to a tribe but applicable to other tribes can be relied upon by the other tribes unless: (a) the games are not exactly the same; or, (b) the classification decision is for a game that is a card game played in a state different from the states in which tribes seeking to rely upon the prior classification decision are located.

§5__5 What must a Tribe do with respect to all games played on its lands?

(a) A Tribe shall develop procedures for the investigation and consideration of requests for classification decisions as provided under this part, for the issuance of classification decisions by the tribe as provided in this part for all games played on its lands, for the collection, forwarding, and retention of information and tangible items under this part, and for the request of classification decisions from the Commission for certain games as provided in §5__6, subd. (c), and §5__7.

(b) A Tribe shall give the following notice in writing to each person providing a game for use on the tribe's lands in advance of the tribe collecting any materials on the game under this part in connection with the issuance of a classification decision:

Solicitation of the information and tangible items requested by the Tribe in connection with the game is authorized under the laws and regulations of the Tribe, the Indian Gaming Regulatory Act, as codified in 25 U.S.C. §§2701 *et seq.* (the "Act"), and related regulations by the National Indian Gaming Commission. The purpose of the requested information is to determine the classification and permitted status of the game under the Act. The information and tangible items will be used by officials of the Tribe and by the National Indian Gaming Commission who have need for the information and tangible items in the performance of their official governmental duties. The information and tangible items may be disclosed to appropriate federal, tribal, state, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement of the Tribe or the National Indian Gaming Commission in connection with an investigation or the regulation or operation of the Tribe's gaming facility. Failure to consent to the provision and use as described herein of the information or tangible items sought in connection with the classification of the game proposed to be offered for use in the Tribe's gaming facility may result in the Tribe's being unable to use your game in its gaming facility. Additionally, a false statement or erroneous or incomplete information provided in any part of your application to the Tribe for a classification decision may result in the Tribe's being unable to use your game in its gaming facility and may further be grounds for a classification decision by the Tribe or by the National Indian Gaming Commission that your game may not legally be played in the Tribe's gaming facility. The information provided by you to the Tribe will form the basis of official filings with the National Indian Gaming Commission. You may be punished by fine or imprisonment for false statements or erroneous or incomplete information provided in your application for a classification decision.

(c) A Tribe shall in connection with issuing a classification decision under this part request and collect from each person or entity providing a game for use on the Tribe's Indian lands the following information and items:

- (1) A written request for a classification decision and a designation of an agent who is authorized on behalf of the person or entity requesting the classification decision to provide additional information if required;
- (2) A complete written description of the game including the operational characteristics and rules of the game and the manner of use of any computer, electronic or other technologic aids in the play or operation of the game;
- (3) A complete written description of the method used for betting, paying winners, paying the house, and banking or non-banking of the game and funding jackpots;
- (4) Copies of all sales or promotional literature for the game;
- (5) For games that use computer, electronic or other technologic aids;

- (i) A videotape depicting the play of the entire game and the operation of all aids in connection with the game;
- (ii) A report of all laboratory test(s) conducted to support the application;
- (iii) An example of each of the memory storage chips (EPROM) or device used to control the game play in the machine and a paper print out of the code contained in each chip or device with sufficient programmer's notes to facilitate rapid analysis of the code;
- (iv) A written description with supporting diagrams of any networking or other technology used in connection with the game;

- 9) For card games, a statement with supporting materials explaining how the game meets the standard described in §502.3, subd. (c), of this chapter.
- 9) A written designation of whether and where the game is already in play and a copy of all prior classification decisions or correspondence issued by any tribe or the Commission in connection with the classification of the game;
- 9) Such other information or items the tribe deems necessary in connection with the game or the application for the classification decision;
- 9) A separate summary written description of the game, any computer, electronic or technologic aids used with the game, and the method used for betting, paying winners, paying the house, banking or non-banking of the game and funding jackpots, which separate written description shall be provided by the Commission pursuant to §5__13 to persons or entities other than the tribe seeking to comment on the classification of the game in connection with the issuance of a classification decision by the Commission for the game; and,
- 10) A statement signed by an authorized tribal official responsible in whole or in part for the operation of the tribe's gaming facility indicating a present intention to use the game in the tribe's gaming facility.

(d) A tribe shall conduct an investigation into each game conducted on the tribe's Indian lands sufficient for the tribe to issue a classification decision for the game and to comply with the other requirements of this part.

(e) Before the time of first play of games on its Indian lands, or for games already in play on the effective date of this part then within ninety days of the effective date of this part, a tribe shall issue a written classification decision for each game, forward the items to the Commission as provided under §5__6, and request a classification decision from the Commission for certain games under §5__6 subd. (c) and pursuant to §5__7.

(f) A classification decision by a tribe shall include the following information:

- (1) An identification with particulars as to the version of the game for which the classification decision applies and the identity of the person or entity owning or providing the game and the agent for that person or entity with respect to the application to the tribe for the classification decision;
- (2) The identity and contact information of the tribal official issuing the classification decision;
- (3) Steps taken in investigating the game and in reaching a conclusion as to the classification of the game;
- (4) Results obtained;
- (5) Conclusions reached including whether the game is subject to the Act and, if so, whether the game constitutes class II or class III gaming under the Act;
- (6) The bases for those conclusions including a description of the information or tangible items considered or discounted in reaching those conclusions; and,
- (7) The separate written description of the game, any computer, electronic or technologic aids used with the game, and the method used for betting, paying winners, paying the house, banking or non-banking of the game and funding jackpots, collected by the tribe under subd. 9(9) of this section.

(g) For each game to be played on the tribe's Indian lands following the effective date of this part, an authorized tribal official shall review the game, the information or tangible items submitted in support of the classification decision for the game, any other classification decisions issued for the game, any correspondence concerning the classification of the game, and any other relevant materials, and determine in a written game classification decision whether the game is subject to the Act and, if so, whether the game constitutes class II or class III gaming under the Act. The tribal official may in his or her sole discretion

determine in a written statement of decision whether under the circumstances present the tribe should allow a person or entity to withdraw a request for a game classification decision prior to the issuance by the tribe of a classification decision; the written statement shall include the circumstances and factors that support the tribe's allowing the person or entity to withdraw the request for the classification decision.

(h) A tribe shall maintain and make available for inspection by authorized representatives of the Commission all information or items gathered by a tribe or pertaining to a classification decision for three (3) years from the date of the collection of the materials, the issuance of the game classification decision, or the date the game was last played on the Tribe's lands.

(i) A right to a hearing shall vest with respect to decisions by a tribe or its officials with respect to an application for a classification decision only upon issuance of a notice of violation or closure order by the Commission.

(j) To the extent that a game is subject to the Act, a tribe shall comply with all parts of this chapter in connection with the play of that game on the tribe's lands.

§5___. What must a Tribe forward to the Commission with respect to classification decisions by the Tribe.

(a) A tribe shall immediately forward to the Commission all game classification decisions issued by the tribe under §5___.5, subd. (d), all written statements issued by a Tribe under §5___.5, subd. (g) that a tribe has allowed an application for a game classification to be withdrawn prior to the issuance of a game classification decision, and for all games for which a classification decision has been issued, or wherein an application has been withdrawn, a written certification as to whether the tribe will or does offer the subject game on its Indian lands.

(b) Before the time of first play of a game on its Indian lands, or for games already in play on the effective date of this part then within ninety days of the effective date of this part, a tribe shall forward to the Commission copies of those items of written information listed in §5___.5, subd. (c) (1)-(10) and, for those games either requiring a classification decision by the Commission under §5___.7, subd. (e), or allowing a classification decision by the Commission upon the election of a Tribe under §5___.7, subd. (a), the tribe shall also provide the Commission with a written request for a classification decision by the Commission for each such game.

(c) For those games for which a classification decision by the Commission is provided for by §5___.7 and has been requested by a tribe pursuant to subd. (b) of this section, during a sixty day period beginning the latter of when the Commission receives from a tribe the tribe's game classification decision as provided under subd. (a) of this section, or the supporting materials and the written request for a game classification decision from the Commission as provided under subd. (b) of this section, the Chairman may request additional information and items from a tribe concerning the game, the tribe's classification decision, or the supporting materials. Such request shall suspend the sixty day period until the Chairman receives the additional information. The additional information or items requested by the Chairman may include the following:

- (1) a live demonstration of the game;
- (2) a prototype of any games which use computer, electronic or other technological aids; and,
- (3) any other information, tangible item, or clarification the Chairman reasonably requests.

(d) The sixty day period referred to in subd. (c) of this section shall further be suspended during the period of any field test requested by the Tribe and approved by the Chairman under §5___.10.

(e) The Commission shall include on its Internet site and make available through its fax-on-demand documents a listing of:

- (1) games for which tribes have issued classification decisions;
- (2) the conclusions, identities and contact information of tribes issuing classification decisions;
- (3) games for which tribes have issued requests to the Commission for classification decisions;

- (4) games for which the Commission has issued classification decisions under this part and for each game the date on which the classification decision was issued;
- (5) games for which there are in effect prior advisory opinions by the Commission that have not been revoked by the Commission prior to the effective date of this part;
- (6) games for which the Commission has received from a tribe a statement of withdrawal of an application for a classification decision, the identity and contact information of the tribe allowing the withdrawal, and the effective date of the withdrawal;
- (7) the start and expiration of the sixty day period referred to in subd. (c) of this section for each game for which the Commission has received a request from a tribe for a classification decision;
- (8) games for which field-tests have been allowed by the Chairman and the date on which the field-test will expire or has expired.

§5___7 When must a Tribe request a classification decision from the Commission?

(a) A tribe may but need not request a classification decision from the Commission under this part with respect to the following games:

- (1) a game that is the subject of a lawsuit challenging or seeking a declaration of the legality of the game or seeking a forfeiture of equipment related to the game; or,
- (2) a game that is included in the terms of a tribal-state compact; or,
- (3) a game that is included within procedures established by the Secretary for class III gaming; or,
- (4) a game that will be or is offered solely within a state that has determined the game to constitute class II gaming; or,
- (5) a game that is owned by the tribe on the effective date of this part and for which the tribe is unable after reasonable effort to obtain the items provided under 5___5, subd. (g), from the person that provided the game to the tribe; or,
- (6) a game that is played or offered on Indian lands that are located within a state that has not consented to suit under 25 U.S.C. 2710 in connection with the negotiation or the agreed terms of a tribal-state compact for class III gaming; or,
- (7) a game for which the Chairman, in the Chairman's discretion, has determined that the tribe under the equities of the facts confronting the tribe need not request a classification decision from the Commission under this part.

(b) There shall be a binding presumption that a game is class II gaming, and a tribe need not request a classification decision from the Commission decision under this part, with respect to the following games:

- (1) a game other than a game similar to bingo that is included among the games listed as class II gaming under the Act and which is played solely with paper game pieces; or,
- (2) a game that meets the Commission's definition of a game similar to bingo and which is played solely with paper game pieces; or,
- (3) a game that meets the definition of bingo under the Act and which is played with a bingo blower or other physical or mechanical means for determining numbers or symbols which blower or means is physically separate from and not connected to any computer, electronic or technologic aid used in connection with the play of the game; or,
- (4) a game that meets the Commission's definition of a game similar to bingo and which is played with a bingo blower or other means for determining numbers or symbols which blower or means is physically separate from and not connected to any computer, electronic or technologic aid used in connection with the play of the game; or,
- (5) a game that is not bingo or a game similar to bingo but which is included among the games listed as class II gaming under the Act and which is played with game pieces that are manufactured or determined by a process or means which process or means is physically separate from and not connected to any computer, electronic or other technologic aid used in connection with the play of the game and the game is played in whole or part with paper game pieces; or,
- (6) a game that has not been modified, as defined in §5___11, and which prior to the effective date of this part has been determined in writing by the Commission in an advisory classification opinion to constitute class II gaming and the advisory classification opinion has neither been revoked by the Commission prior to the effective date of this part nor overruled by a final judicial ruling by a court with jurisdiction over the Indian lands on which the game is to be played; or,

- 1) a game that has not been modified, as defined in §5 __.11, and which has been determined by the Commission under this part to constitute class II gaming and the Commission's determination has not been overturned by a final judicial ruling by a court with jurisdiction over the Tribal lands on which the game is to be played; or,
- 2) a game that has not been modified, as defined in §5 __.11, and which has been determined in a final judicial ruling to constitute class II gaming and the ruling has not been overturned by another court with jurisdiction over the Indian lands on which the game is to be played.

(c) A Tribe shall request a classification decision from the Commission for all games not described in subds. (a) or (b) of this section.

§5 __.8 What is the effect of a classification decision?

(a) If the Commission does not issue a classification decision within the sixty day period described in §5 __.6 subd. (c) of this part, the classification decision of the tribe and forwarded to the Commission shall be deemed the classification decision of the Commission.

(b) A tribe shall reconsider its classification decision for any game for which the Commission issues a classification decision stating a conclusion as to the applicability of the Act or the classification of the game under the Act that is different from the conclusions reached by the tribe in the tribe's classification decision with respect to the game. After reconsidering its classification decision, a tribe may either decline to amend its game classification decision or amend its game classification decision to reach the same conclusions as those reached by the Commission.

(c) A tribe may decide to offer a game in the absence of a tribal-state compact or procedures by the Secretary authorizing such game as class III gaming even if the Commission issues a classification decision that the game is subject to the Act and constitutes class III gaming; however, the tribe will be subject to enforcement action by the Commission as authorized by the Act if the tribe offers a game determined by the Commission in a classification decision to constitute class III gaming and the game is not subject to a Tribal-state compact or to procedures by the Secretary authorizing the game. If a tribe decides to continue to offer a game under this subd. (c) following an adverse classification decision by the Commission, the tribe shall give written notice to the Commission of the tribe's decision.

(d) A classification decision issued by one tribe with respect to a game shall not be binding upon any other tribe with respect to that game.

(e) A classification decision issued by the Commission under this part shall constitute final agency action for purposes of judicial review. A classification decision by the Commission under this part and determining a game to constitute class II gaming shall be binding upon the Commission and shall not be revocable by the Commission as to the subject game; provided, however, that the classification decision shall not be binding upon the Commission as to modifications of the game.

§5 __.9 Are there any additional requirements for games which employ machines or devices?

After a game has been classified by a tribe and put into play, the tribe shall provide the Commission with a serial number and description of each player station, machine, or device, which is in use with the game and shall certify that each such player station, machine, or device, is identical in every respect to the game which was classified by the tribe. The tribe shall have a continuing duty to update the information provided to the Commission under this section.

§5 __.10 Will field tests be permitted for any games?

(a) During the sixty-day period referred to in §5 __.6, subd. (c), a tribe making a request for a classification decision from the Commission for a game may request the Chairman for permission to conduct a field test of the game. Following such a request by a tribe, the Chairman shall have a right during the sixty-day period to make a non-binding classification decision to allow for a field test. If such non-binding decision is made, the

tribe may be permitted by the Chairman to operate one or more of the games at a licensed gaming operation for no more than 180 days under such terms and conditions as the Chairman may approve or require.

(b) The Chairman may order a termination of the field test period, if the Chairman determines, in his or her sole and absolute discretion, that the tribe, the person or entity providing the game, or the licensed gaming operation has not complied with the terms and conditions of the field test period or if the Chairman determines that the game is subject to the Act and does not constitute class II gaming.

§5__11. What is required of a tribe or person who merely seeks a modification of a game which is already the subject of a classification decision issued under this part?

(a) A person or entity owning or providing a game to a tribe for use on Indian lands shall notify the tribe in writing in advance of making any change in a game for which a classification decision has been issued under this part.

(b) For purposes of this part and this section, a game shall be deemed to have been modified if since the time of issuance of the classification decision there has been a change in the use of a computer, electronic, or technological aid used in connection with the operation or play of the game or in the basic nature of the game;

(c) A person or entity owning or providing a game that has been modified as defined in subd. (b) of this section shall apply to the tribe on whose lands the modified game will be used for a classification decision for the game as modified;

(d) This part shall apply to a modified game as if the modified game constituted a new game; and,

(e) A tribal official shall investigate and certify in writing as to each change that occurs in a game being used on Indian lands whether the information collected by the tribe under §5__5, subd. (c), remains true, and whether a modification has occurred in the game as defined in subd. (b) of this section. The written certification by the tribal official shall be retained for the period and as provided in §5__5, subd. (g).

§5__12. Must a tribe or person seek a classification decision on a game which is alleged to be a game of skill?

A tribe or a person or entity that owns or provides a game used on Indian lands, shall follow the same process for receiving a classification decision for games alleged to be games of skill as is used for other games in this part.

§5__13. Is there an opportunity for public comment on a request by a Tribe to the Commission for a classification decision?

The Commission will include on its Internet site and its telephonic fax-on-demand documents a listing of all games for which it has been requested by tribes to issue classification decisions. Games for which tribes have requested a classification decision under this part will appear on the Commission's listing for thirty (30) days whenever practicable. During this period, any individual or entity may request from the Commission a copy of the summary description of such games as to which classification decisions have been requested by tribes from the Commission as collected by the tribes under §5__5 subd. (c)(9) and forwarded by the tribes to the Commission under §5__6, subd. (b), and offer written comment on the classification of the game, which comment may be considered by the Commission in issuing a classification decision.

§5.14 How does a Tribe appeal a classification decision from the Commission?

(a) Within thirty days of service of a classification decision determining that a game constitutes class II gaming subject to the Act, a tribe may but need not appeal a classification decision by the Commission under this part by filing:

- (1) a notice of appeal with the Commission; and,
- (2) a statement and any supporting materials specifying why the appellant believes the classification decision to be erroneous.

(b) In connection with an appeal from a classification decision by the Commission, a tribe, or interested party defined in subd. (c) of this section, shall have a right to request both an oral hearing on the appeal and a live demonstration of the game before the full Commission.

(c) Any tribe on whose lands the game the subject of the appeal is being played, and the person or entity providing the game for play on Indian lands, shall have the right to join the appeal as an interested party. An interested party as defined in this section shall within fifteen days of the filing with the Commission of the original appeal on the classification decision file with the Commission: (1) a notice of intent to join the appeal to the Commission; and, (2) a statement and any supporting materials specifying why the interested party believes the classification decision to be erroneous. The time for a tribe, or a person or entity providing the game, to join an appeal may be extended by the agreement of the Commission and the tribe originally filing the appeal.

(d) Failure to file or to join an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal to the Commission on the classification decision but shall not affect the rights of the tribe, an interested party as defined in this section, or any person or entity owning or providing the game, in connection with any enforcement proceeding or any judicial proceeding. Any review of a classification decision outside of the appeals process described in this section, any enforcement proceeding relating to the game the subject of a classification decision determining the game to be subject to the Act or to constitute class II gaming, or an appeal therefrom, or in any original or related judicial proceeding shall be de novo.

(e) Within sixty days of receipt of the appeal, the Commission shall review its initial classification decision, consider any material submitted, or testimony heard or demonstrations made, during the appeal and issue a written decision on the appeal. The written decision shall include a statement of facts and an analysis of law supporting and not supporting the decision. The time for the Commission to issue its decision on the appeal may be extended by agreement of the tribe originally filing the appeal.

(f) The Commission shall not institute enforcement proceedings with respect a game for which an appeal is pending with respect to a classification decision on the game.

End.

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